



**STATE OF NEW HAMPSHIRE**  
**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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Town of Hampton

Complainant

v.

Hampton Firefighters, Local 2664. IAFF  
IAFF, AFL-CIO, CLC

Respondent

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Case No: F-0118-14

Decision No. 2005-110

**PRE-HEARING MEMORANDUM AND ORDER**

**BACKGROUND**

The Town of Hampton (hereinafter "the Town") filed an unfair labor practice complaint on June 23, 2005 alleging that the Hampton Firefighters, Local 2664. IAFF, AFL-CIO, CLC (hereinafter "the Association") violated RSA 273-A:5 II (f) by breaching the parties' collective bargaining agreement ("CBA"). More specifically, the Town states that the Association filed a grievance relating to "shift configuration" in a letter dated April 10, 2005. The Town contends that the subject of shift configuration falls within the scope of its' management rights as expressed within Article 4 of the parties' CBA, and hence it is not subject to the CBA's grievance procedure. The Town points to express language in Article 4, Section 2 establishing that the provisions of Article 4 are not subject to the terms of the grievance procedure set forth in Article 30. The Town submits that, through its' Fire Chief, it has the ability to set shift configurations as it sees fit. It therefore asserts that by instituting the grievance and pursuing arbitration, the Association has violated Article 4 of the CBA and thereby committed an unfair labor practice in violation of RSA 273-A:5 II (f). As remedies, the Town requests, among other things, that the PELRB find that the issue at hand is not arbitrable and order the Association to withdraw its' demand for arbitration.

The Association filed its answer denying the Town's charge on July 8, 2005. While the Association generally admits to the chronology of events as described in the Town's complaint, it denies any violation of the law. By way of further answer, the Association states that it did file a grievance alleging ongoing violations of "the Work Agreement, specifically Article 15 (Overtime), Article 40 (Safety and Health); and all other relevant sections of the Work Agreement." It further avers that since the parties' arbitration clause empowers the arbitrator to

determine all questions of arbitrability (ref. Article 30, Section 5, C), the Town's claim that the grievance is not arbitrable is itself an appropriate question to be submitted to an arbitrator. Accordingly, the Association requests, inter alia, that the PELRB dismiss the Town's complaint.

On August 19, 2005, the Town filed a "Motion to Order the Arbitration Demanded by the Hampton Firefighters, Local 2664, IAFF, to be held in Abeyance" seeking a Board order staying an arbitration hearing scheduled for December 12, 2005. In response thereto, the Association incorporates by reference in this matter the objections and Motion to Dismiss that it filed with the Board on August 15, 2005 in Case No. F-0118-13.<sup>1</sup> The Association states, among other things, that based upon relevant case law, including *Appeal of Westmoreland*, 132 N.H. 103 (1989), the Town's complaint should be dismissed and the grievance should proceed in arbitration.

A pre-hearing conference was conducted by the undersigned hearing officer at PELRB offices on August 19, 2005.

#### PARTICIPATING REPRESENTATIVES

For the Association: John S. Krupski, Esq.

For the Town: Elizabeth A. Bailey, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

- (1) Does the Board have jurisdiction to hear the dispute or should it be submitted to an arbitrator under the terms of the parties' grievance procedure?
- (2) If Board jurisdiction is appropriate, did the Association commit an improper labor practice, within the meaning of RSA 273-A:5 II (f), by instituting the shift configuration grievance and pursuing it to arbitration?
- (3) If so, what shall be the remedy?

#### WITNESSES

For the Town:

1. James Barrington
2. Chief Hank Lipe
3. Michael McMahon

<sup>1</sup> Association counsel moved for said incorporation during the course of the pre-hearing conference and following representations made by Town counsel that the Town's motion filed on that date mirrored the motion that it had earlier filed on August 1, 2005 in Case No. F-0118-13.

For the Association:

1. Michael McMahon

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

#### EXHIBITS

Joint Exhibits:

1. Collective Bargaining Agreement 4/1/2003-3/31/2006.
2. Letter from Michael McMahon to Chief Lipe, dated 4/10/05.
3. General Order 5-13
4. Letter from Chief Lipe to Michael McMahon, dated 4/11/05
5. Letter from Michael McMahon to James Barrington, dated 4/13/05
6. Letter from James Barrington to Michael McMahon, dated 4/21/05.
7. Letter from Michael McMahon to James Barrington, dated 4/27/05.
8. Letter from James Barrington to Michael McMahon, dated 5/6/05.
9. Letter from Michael McMahon to James Workman, dated 5/12/05
10. Letter from Board of Selectmen to Local 2664, dated 6/1/05.
11. Letter from Michael McMahon to James Workman, dated 6/2/05.
12. Letter From Richard Molan to American Arbitration Association, dated 6/2/05.
13. Town's Answer to Demand from Arbitration.

For the Town:

None other than those marked as "Joint."

For the Association:

None other than those marked as "Joint."

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

#### LENGTH OF HEARING

No hearing is scheduled at this time.

## DECISION

1. PELRB Case Nos. F-0118-13 and F-0118-14 are hereby consolidated solely as to the issue of jurisdiction.
2. The Association's "Objection to the Town of Hampton's Motion to Order the Arbitration Demanded by the Hampton Firefighters, Local 2664, IAFF, to be Held in Abeyance and Motion to Dismiss" filed with the Board on August 15, 2005 in Case No. F-0118-13 is hereby incorporated by reference into Case No. F-0118-14.
3. The Town shall file its response to the Association's Motions to Dismiss on or before **August 30, 2005**. The Association shall thereafter file, on or before **September 2, 2005**, any supplemental facts and argument as to jurisdiction. As of that date, the parties' submissions on the issue of jurisdiction shall be deemed closed and a Board decision shall issue based solely upon the file documents and the parties' memoranda, unless it is determined that a hearing is necessary prior to a final determination.
4. In the event the parties are able to resolve the instant matter prior to a decision on jurisdiction, counsel shall notify the Board of such settlement as soon as possible.
5. In the event that the instant matter proceeds to hearing based upon the granting of a party's motion for same, or based upon the Board's own motion, the parties' representatives shall meet, or otherwise confer, on or before 10 days prior to the hearing date, in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document, a long with any corresponding exhibits, with the PELRB at least five (5) days prior to the date of the hearing.
6. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

So ordered.

Signed this 24<sup>th</sup> day of August, 2005.



Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

John S. Krupski, Esq.

Elizabeth A. Bailey, Esq.